
PRIVACY BILL 2006

EXPLANATORY AND FINANCIAL MEMORANDUM

Purpose of the Bill

1. The purpose of the Bill is to provide for a new tort of violation of privacy taking into account the jurisprudence of our courts and the European Court of Human Rights.

Definitions

2. *Section 1* is a standard provision defining certain terms used in the Bill.

Tort of violation of privacy

3. *Section 2* provides that it is a tort for a person wilfully and without lawful authority to violate the privacy of an individual. The tort is actionable without proof of special damage.

Entitlement to privacy

4. *Section 3* provides that a person's entitlement to privacy is that which might be reasonable in all the circumstances having regard to the rights of others and to public order and the common good. Without prejudice to the generality of the entitlement, there shall be a violation of privacy, subject to the provisions of *sections 5* (defences) and *6* (certain disclosures not a violation of privacy), by subjecting another person to surveillance and by the disclosure of information so obtained; by (unauthorised) use of name, voice or likeness of an individual for commercial purpose; by the disclosure of personal information or documents of a person or to commit an act (of harassment) as described in section 10 of the Non-Fatal Offences Against the Person Act 1997.

Matters to which the court shall have regard

5. *Section 4* provides for a range of factors to which a court shall have regard in determining whether a violation of privacy of an individual has occurred.

Defences

6. *Section 5* provides for a number of defences to an allegation of violation of privacy. These essentially involve where the act was that of a public servant acting or reasonably believing themselves to be acting in the course of their duties, the installation and operation of a closed circuit television system for a purpose authorised by law or for the protection of persons or property, for the prevention or investigation of crime or under the law or was an act of newsgathering by a newspaper or broadcaster provided that any disclosure of material obtained was done in good faith, was for the purpose of discussing a subject of public importance, was for the public benefit and was fair and reasonable in all of the circumstances.

Certain disclosures not a violation of privacy

7. *Section 6* provides for a number of instances whereby the disclosure of any matter concerning an individual is not a violation of privacy. These include where the disclosure was done in good faith for the purpose of discussing a subject of public importance, in circumstances of privilege, by a public servant in the course of their duties and as provided for under the Data Processing Acts.

Jurisdiction of courts

8. *Section 7* provides a jurisdiction for actions taken in the Circuit Court where the claim does not exceed €50,000.

Remedies

9. *Section 8* provides that in a privacy action the court may grant any one or more of the following remedies to the plaintiff: - an injunction, - award damages, - order the defendant to account to the plaintiff for profits that have accrued or may later accrue to the defendant because of the violation of privacy, - order the defendant to deliver to the plaintiff any material, articles, photographs or documents that have come into the defendant's possession because of the violation of privacy, or - grant any other relief to the plaintiff that appears to the court proper in the circumstances.

Dismissal for want of prosecution

10. *Section 9* provides that in a privacy action in which no proceeding, required by rules of court, has been taken by the plaintiff during the period of one year from the beginning of the action, the action may be dismissed on application to the court by the defendant.

Appeals in privacy actions

11. *Section 10* is self explanatory.

Limitation of action

12. *Section 11* provides that a privacy action must be brought within a period of one year from the discovery of the alleged acts, though a court may extend this period to 2 years.

Notice of intention to bring action

13. *Section 12* is self-explanatory.

Hearing of action other than in public

14. *Section 13* provides that a court may on the application of a person who claims that his or her rights under the Act have been or are about to be infringed, hear any or all of an action for violation of privacy other than in public.

Trial of Privacy Action

15. *Section 14* provides that a privacy action shall be tried without a jury.

Extinguishment of cause of action on death

16. *Section 15* provides that a right of action for violation of privacy is extinguished on the death of the person alleging the infringement.

Saver

17. *Section 16* provides that the Act should only apply to a cause of action which accrues after it comes into operation.

Short title and Commencement

18. *Section 17* is a standard provision and proposes that the Act shall come into operation one month after its passing.

Financial Implications

19. There are no discernable financial implications for the Exchequer.